

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GE COMMERCIAL DISTRIBUTION  
FINANCE CORP. a Delaware corporation,

Plaintiff,

v.

HOLIDAY MOTORHOMES, INC., a  
Washington corporation,

Defendant.

No. C11-5359RBL

ORDER DENYING PLAINTIFF'S  
MOTIONS FOR REPLEVIN, AND A  
TEMPORARY RESTRAINING ORDER  
[Dkt. #6]

This matter is before the court on Plaintiff GE Commercial Distribution Finance Corp's Motion for Replevin and for a Temporary Restraining Order. [Dkt. #6]. Holiday responds that the parties have already agreed to, and in fact have begun to, arbitrate all disputes between them, including issues of possession of the collateral.

In 2002, Plaintiff GE CDF provided wholesale floor financing to Defendant Holiday, for Motor Homes Holiday sells retail at lots in Fife, Washington, and elsewhere. GE CDF maintained a security interest in each of the vehicles in Holiday's possession, and continues to retain physical possession of the titles.

It is apparently undisputed that Holiday defaulted on its payment obligations to GE CDF under the financing agreement. GE CDF filed this lawsuit on May 9, 2011, claiming the total outstanding balance of over \$6 million. It now moves for a temporary restraining order entitling it to immediate possession of the collateral (inventory) in Holiday's possession. Its Motion is based on Fed. R. Civ. P. 65 and RCW 7.64.035.

1 This lawsuit appears to be at least the fourth filed by GE CDF in an effort to recover the  
2 vehicles and payment. The first two lawsuits, filed in Pierce County, Washington, and Maricopa  
3 County, Arizona, led to a January 2010 Settlement and Forbearance Agreement. That  
4 Agreement required payment by June 30, 2010. That date came and went without payment, and  
5 the Agreement was extended to September 30, 2010. Holiday did not pay, and on November 29,  
6 2010, instead filed an action against GE CDF in Pierce County Superior Court (Cause No. 10-2-  
7 15341-7). Holiday apparently claimed that GE CDF had breached the Settlement Agreement.  
8 GE CDF removed the case to this court, and moved to compel arbitration under the terms of the  
9 Settlement Agreement. [See Cause No. CV 10-5940BHS] On January 31, 2011, GE CDF's  
10 Motion was Granted without objection, and the matter was sent to arbitration before the AAA in  
11 Seattle. Judge Settle declined Holiday's request that he retain jurisdiction pending the result of  
12 the arbitration. [See Dkt. #16 in Cause No. CV 10-5940BHS].

13 Despite the fact that the parties' dispute was in arbitration, GE CDF filed another lawsuit  
14 in Pierce County (Cause No. 11-2-06411-1) on February, 14, 2011, and sought the same relief it  
15 seeks in this Motion – a TRO and an Order of Replevin. That Motion was DENIED by the  
16 Commissioner and by the Court on a Motion to Revise. GE CDF sought and obtained dismissal  
17 without prejudice on April 28, 2011. On May 9, 2011, GE CDF filed this, its fourth, lawsuit on  
18 this same subject matter. For reasons which are not clear, but which can be surmised, it did not  
19 reference the prior related action in this court. GE CDF again seeks a TRO and an Order of  
20 Replevin.

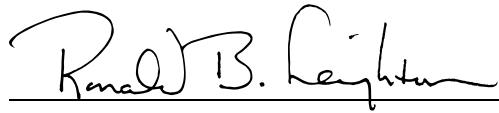
21 Holiday opposes the Motion, arguing as it presumably did previously, that the issues  
22 raised in this case and this motion have already been referred to the AAA for arbitration.  
23 Specifically, Holiday argues, and demonstrates, that Holiday's right to continue to sell the  
24 collateral is before the AAA. [See Dunkin Dec. at Ex. D, Dkt #12.]

25 There have been five prior lawsuits and there is ongoing a binding arbitration proceeding  
26 addressing the very issues raised in this lawsuit and this Motion. The Plaintiff's Motion for a  
27 TRO and for an Order of Replevin [Dkt. #6] is DENIED.  
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1 Holiday's Motion for fees, based on its claim that this action is frivolous, is DENIED  
2 WITHOUT PREJUDICE. Holiday's Motion to Dismiss this action is similarly DENIED. The  
3 Court will retain jurisdiction under Federal Arbitration Act, 9 U.S.C. §9, in an effort to cut off  
4 further serial litigation on these issues and to provide a vehicle for addressing the post-award  
5 proceedings outlined in that Act.

6 **IT IS SO ORDERED.**

7 Dated this 3<sup>rd</sup> day of June, 2011

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10 RONALD B. LEIGHTON  
11 UNITED STATES DISTRICT JUDGE  
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